

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SBG MANAGEMENT SERVICES, INC. ET AL	:	C-2012-2304183 C-2012-2304324
VS.	:	C-2015-2486618 C-2015-2486642
PHILADELPHIA GAS WORKS	:	C-2015-2486648 C-2015-2486655 C-2015-2486664 C-2015-2486670 C-2015-2486674 C-2015-2486677

**COMPLAINANTS' ANSWER TO PGW'S MOTION IN LIMINE AND FORMAL
OBJECTION TO PRECLUDE FROM CONSIDERATION THE MAY 2, 2023 REMAND
TESTIMONY OF SAMANTHA PULLEY**

AND NOW, come the Complainants by and through their counsel Goldstein Law Partners, LLC, and make the following Answer to PGW's Motion in Limine and Formal Objection to Preclude From Consideration the May 2, 2023 Remand testimony of Samantha Pulley, and in support thereof, avers the following:

I. BACKGROUND

On April 25, 2023, the Honorable Eranda Vero, Administrative Law Judge ("Judge Vero") convened an evidentiary hearing in the above matter. At the conclusion of the testimony of PGW's witness, Mr. Bernard L. Cummings ("Mr. Cummings"), the following colloquy occurred:

JUDGE: All right. I don't have anything else for you, Mr. Cummings. I think I covered everything. I think I covered everything, but any Recross or Redirect?

ATTORNEY CLEARFIELD: No Redirect, Your Honor.

JUDGE: Okay.

ATTORNEY YANOFF: I have Rebuttal, if I may, Your Honor.

JUDGE: Rebuttal Testimony?

ATTORNEY YANOFF: Yes, I have two very brief witnesses based upon what Mr. Cummings has testified to.

ATTORNEY CLEARFIELD: Wait, you can't rebut Cross Examination, Your Honor.

ATTORNEY YANOFF: I'm not rebutting Cross Examination. I'm rebutting his Direct Testimony.

ATTORNEY CLEARFIELD: You just said based on what he testified to on –

ATTORNEY YANOFF: No, I didn't say anything beyond that. Based upon what he testified to.

JUDGE: Okay. Can you at least get some of this information on the record by conducting Cross?

ATTORNEY YANOFF: No.

JUDGE: It's impossible. Okay.

ATTORNEY CLEARFIELD: Your Honor, I respectfully object. Rebuttal was supposed to be submitted months ago. This is a PUC proceeding. Those dates are - as you know, are well established. You can't just walk into a hearing and -.

JUDGE: Okay. Did we agree that any document that non-expert witnesses had to specify in writing?

ATTORNEY CLEARFIELD: We never agreed that non-expert witnesses did not have to testify in writing. Your order says witnesses for both sides have to submit their Direct on a certain date and Rebuttal on a certain date. It doesn't make any exception for non-expert witnesses, and I don't even know who they would be. It would be a complete sandbag.

JUDGE: I'm sorry?

ATTORNEY CLEARFIELD: I'm sorry. Never mind. I'll withdraw that.

JUDGE: Again, Mr. Yanoff, you're saying you cannot clarify the situation by Cross Examination?

ATTORNEY YANOFF: No. In fact, without revealing what the witness would indicate that Mr. Cummings made a certain comment concerning vacated liens here today that we have determined is inaccurate. And we're able to – we were able to prove that with a document, but we could have been finished that testimony already if Mr. Clearfield has not objected.

JUDGE: Isn't that why you're refiling Surrebuttal, to address liens, vacated liens?

ATTORNEY YANOFF: Well, if Your Honor allows us to do, that's fine. But I - if Your Honor says that I can put that in my Surrebuttal, the answer is I'll put it in my Surrebuttal.

JUDGE: Their supplemental Rebuttal Testimony had two purposes updated outstanding balance and their position that they can only being forced to it, they will only admit to two vacated liens, I think, that could have - possibly have been paid. They gave into two. I gave you a chance to respond to them. You want to do more?

ATTORNEY YANOFF: Your Honor, Mr. Cummings made a specific comment about the reasons why liens were vacated. He was very specific about the fact that they were not paid. I have a rebuttal witness who could prove to Your Honor that is an inaccurate statement.

JUDGE: All right. **I will allow you to put it in, in your Surrebuttal.**

ATTORNEY YANOFF: Thank you, Your Honor. I'm perfectly satisfied with that. Thank you.

ATTORNEY CLEARFIELD: Well, Your Honor, I reserve the right to object – move to strike that depending on the context. It has to be associated with Mr. Cummings's supplemental –

ATTORNEY YANOFF: And it is rebuttal.

ATTORNEY CLEARFIELD: - which, by the way, shows that in all but the two instances, liens were vacated prior to the time any payment were made. So the payment could not possibly have been made on the lien. They were made on the gas balances. That's what the testimony that we submitted shows. I just wanted to make sure that was clear on the record. We'll look at the testimony and then we can respond. Maybe there's no argument.

ATTORNEY YANOFF: I doubt that.

ATTORNEY CLEARFIELD: I doubt it, too.

JUDGE: Okay. I also thought that SBG is a response to discovery. Right? To discovery – PGW’s discovery set two – or set two interrogatories and also went to vacated liens.

ATTORNEY CLEARFIELD: It did.

JUDGE: So it is still not covered?

ATTORNEY YANOFF: No, it is not.

JUDGE: It is not still covered.

ATTORNEY YANOFF: No, it is additional testimony that were able to determine based upon our continuing review of the documents.

JUDGE: Yeah, but there should be a limit.

ATTORNEY YANOFF: I'm not putting anything else in besides that. That is a very brief witness.

JUDGE: There should be a limit. I mean, discovery can go on in perpetuity, if the parties are left – if they are to their own devices, but we cannot have that. I have already belabored the point that we need to move on.

ATTORNEY YANOFF: This is very brief and it will be in there.

JUDGE: No, it will not. No. **I will allow you to file supplemental - and to file Rebuttal Testimony, but not more. I mean, not another witness on the stand for Rebuttal purposes.**

ATTORNEY YANOFF: And I agree with that. That's fine, Your Honor. We're happy with that.

*See N.T., 4/25/23, at 259-264.*¹ Emphasis added.

On May 2, 2023, Complaints submitted (1) the Remand Sur-Rebuttal Testimony of Christopher E. Hansen and (2) the Remand Sur-Rebuttal Testimony of Samantha Pulley with exhibits, all in accordance with Judge Vero’s express permission as cited above. Complainants’ submission specifically addressed the statements made by Mr. Cummings in his direct and cross

¹ In its motion, in Footnote 1, PGW states that it does not object to Mr. Hansen’s Remand Sur-rebuttal, stating correctly that Your Honor allowed it. However, it appears that PGW did not read the entire transcript regarding Ms. Pulley’s proffered Remand Sur-rebuttal as set forth above. PGW’s argument is contrary to its counsel’s obligation of candor to the Court.

examination at the hearing on April 25, 2023, as well as his Supplemental Remand Rebuttal Testimony submitted on April 24, 2023 at 4:08 p.m., which were the subject matter of the above colloquy.

II. ARGUMENT

A. **Mr. Cummings Testified to New False, Misleading and Inaccurate Assertions to which Complainants Did Not Have the Opportunity to Respond.**

PGW has now filed the instant Motion and Objection, seeking to preclude any consideration of the sur-rebuttal the filing of which Judge Vero specifically allowed. PGW's Motion alleges that, by submitting the sur-rebuttal testimony, Complainants attempt to subject PGW to "trial by ambush." The content of the sur-rebuttal testimony should not come as a "surprise," as PGW contends. Complainants limited their submission to rebutting Mr. Cummings' in-person testimony and the testimony submitted at 4:08 p.m. on the day before the hearing, where he made patently false and misleading statements. Mr. Cummings and PGW, therefore, opened the door to the need for this sur-rebuttal. by making patently false and misleading statements regarding ????????????????

Specifically, at the end of business on April 24, 2023 – the day prior to the evidentiary hearing – PGW submitted Mr. Cummings' Supplemental Remand Rebuttal Testimony. It purported to address Complainants' discovery responses, which delineated specific instances where (a) Complainants made payments to PGW and (b) PGW subsequently marked certain liens "vacated" on the civil docket, ostensibly in response to the payments made in close temporal proximity. In his Supplemental Remand Rebuttal Testimony, Mr. Cummings disputed the evidence provided by Complaints. Except in two instances – Elrae and Oak Lane – where he admitted PGW had, in fact, marked docketed liens "vacated" in response to payments made by Complainants, Mr. Cummings testified that no evidence supports awarding refunds in regard to

vacated liens. *See Cummings Supp. Remand Rebuttal, 4/24/2023, at 4: 13-21.* Mr. Cummings claimed to “refute” the evidence that Complainants provided in discovery, which demonstrated that PGW marked docketed liens “vacated” in response to payments made. *Id.* at 4: 22-24 – 5: 1-21; 6: 1-4. “SBG should not be given a windfall by the Commission on interest amounts that SBG cannot prove that they paid or prove some relation similar to Elrae and Oak Lane discussed above[.]” Mr. Cummings testified. *Id.* at 4: 16-18.

Complainants intended to cross-examine Mr. Cummings thoroughly on these assertions and the analysis underpinning his alleged refutation, which he included in his Supplemental Remand Rebuttal Testimony. Unfortunately, this proved impossible. In his Supplemental Remand Rebuttal Testimony, Mr. Cummings stated that – other than two minor instances – no causal link existed between (a) payments made by Complainants and (b) PGW’s decision to make 128 docketed liens as “vacated.” Complainants could not explore the veracity of Mr. Cummings’ statement, however, because he lacked knowledge of the documents and information necessary to reach the conclusion contained in his own testimony. When questioned by Counsel for Complainants, Mr. Cummings conceded that he lacked specific knowledge of *why* the 128 vacated liens at issue were, in fact, marked “vacated.”

Q. Thank you very much for that testimony about what should or might have happened. With respect to these specific 128 liens, did you investigate as to whether any of those liens were vacated because of reasons other than payment, discussions between PGW and the customer to rectify mistakes or administrative errors or for other unspecified reasons? Did you conduct that investigation or ask anybody to conduct that investigation?

A. **Did I conduct the investigation? I personally, no.**

Q. Did you ask anybody to conduct that specific investigation with respect to those or these specific liens?

A. That were vacated?

Q. Yes.

A. What I would say is that they were vacated at a point in time where the action that caused it to happen led to them to be vacated.

Q. **So is your answer no, that you didn't direct anybody on your staff to investigate these specific liens, to see the reasons why they were vacated?**

A. **I would say no, I did not.**

N.T., 4/25/2023, at 229: 20-25 – 230: 1-19 (emphasis added). Mr. Cummings' testimony on cross-examination, therefore, further reveals that he failed to direct *anyone* to investigate and determine the actual reason *why* PGW marked the 128 docketed liens as "vacated." *Id.* Yet, Mr. Cummings repeatedly offered false testimony that PGW had not "vacated" these 128 liens because of payments made by Complainants. The submission that PGW is now seeking to preclude simply rebuts Mr. Cummings false statements offered during the evidentiary hearing and in his Supplemental Remand Rebuttal Testimony, which Mr. Cummings ostensibly placed in his testimony based upon the unsubstantiated information provided to him by others.

In this Motion, PGW has argued, *inter alia*, that Ms. Pulley's testimony seeks to expand the scope of the proceeding after the evidentiary hearings have concluded. However, PGW's position is directly contrary to Your Honor's ruling on this precise issue made during the evidentiary hearing, as set forth in the except above, to wit: that Complainants could address the specific issues raised by Cummings' Supplemental Sur-Rebuttal (submitted at 4:08 p.m. on April 24, 2023). Ms. Pulley's Remand Sur-Rebuttal submission does exactly that – it provides actual proof that PGW and Mr. Cummings' statements concerning the distinction and significance of classifying liens as "vacated" rather than "satisfied" was wholly inaccurate, and patently false. Ms. Pulley's testimony addresses the *specific* reasons why PGW marked 128 docketed liens as "vacated" – the very issue upon which Mr. Cummings bases his conclusion in his Supplemental

Remand Rebuttal Testimony, and the very issue Mr. Cummings proved unable to discuss during his cross-examination testimony on April 25, 2023. If anything, PGW submitted Mr. Cummings' Supplemental Remand Rebuttal Testimony at 4:08 p.m. the day prior to the hearing – purporting to be a mere “update” to Mr. Cummings' previous Remand testimony – in order to hinder or deny Complainants' opportunity to respond. Failing to consider the submissions of Mr. Hanson and Ms. Pulley would deny Complainants due process. This would be the true ambush and trial by surprise about which PGW complains. And, this is the precise reason why Your Honor decided, during the evidentiary hearing, to allow the submissions of Mr. Hansen and Ms. Pulley.

B. The Sur-Rebuttal Testimony of Ms. Pulley and Mr. Hanson Addresses Only the False, Misleading and Inaccurate Statements presented by Mr. Cummings during his in-person Testimony on April 25, 2023, and in his Supplemental Remand Rebuttal Testimony served on April 24, 2023.

Ms. Pulley's testimony presents evidence that PGW marked many liens attached to SBG Properties as “vacated” as a result of payments made by Complainants. Ms. Pulley utilized the same histories of gas billings and the same lien information PGW used. She compared the liens to the liens recorded with the Court of Common Pleas of Philadelphia County by searching for the main portion of the SBG Property name, such as “Colonial” for Colonial Gardens. She then compiled all of the gas liens for all SBG Properties, and used the information to prepare Exhibit SAP-1, which is a table summarizing the gas liens found in the Court records. Additionally, Ms. Pulley searched the docket numbers immediately before and after each lien to ensure she did not omit any liens from her list based on the sequential nature of the gas liens from PGW's information. She found additional liens on the properties, some of which were appropriately sent to the Tenant Gas Account Holder, but still appeared on the physical property address. Importantly, Ms. Pulley was not able to search the Court of Common Pleas of Philadelphia County docket records by address; therefore, additional liens may have been placed on the

property address but do not appear connected via property/entity name in the docketing system, and thus, do not appear on SAP-1. Ms. Pulley compared her work in SAP-1 to the lien information PGW used and found inconsistencies in the lien value, docket status, and date docket status entered. This prompted her to reconsider all information PGW previously supplied.

Additionally, Ms. Pulley's testimony reveals that a few liens remained active, as PGW had failed to enter or update the docket status. Fairmount provides one such example. The records show that the Fairmount property had been sold. No active liens with original filing dates associated with the previous owner should continue to encumber the property following a sale. Thus, Ms. Pulley investigated such instances. She found that, during the property sale in question, the Title Company conversed with PGW and all other utility companies to ensure payments were made to clear title. PGW cleared some liens following the property sale but not all liens, as evidenced by the dates in which docket status was entered for liens pertaining to the property. PGW was aware of the sale of the property and that it received payment from Complainants, yet PGW chose to mark all liens following the sale and payment as "Judgment Vacated" in the civil docketing system.

Moreover, Ms. Pulley's testimony describes one instance in which PGW provided no prior docket status but updated the status on April 27, 2023, to indicate "Judgment Vacated" in the docketing system (SAP-10). This docket entry occurred after Mr. Cummings' testimony on April 25, 2023, where he asserted that the 128 docketed liens marked as "vacated" did not correspond to payments satisfying those liens. Ms. Pulley's testimony presents the HUD-1 or Settlement Statement from property sales as evidence establishing that – contrary to Mr. Cummings' testimony – PGW did mark liens as "vacated" in connection with payments made (SAP-10). Ms. Pulley's testimony includes similar evidence from other settlement statements

based on her work on SAP-2, SAP-3, and SAP-13, all of which demonstrating a correlation between payments made and PGW's decision to mark liens as "vacated." Thus, Ms. Pulley's testimony directly addresses the false, inaccurate and misleading statements made by Mr. Cummings' testimony, which asserts that PGW did not mark liens as "vacated" in response to payments from Complainants. The facts belie Mr. Cummings' testimony and should be considered in this proceeding.

Ms. Pulley's testimony describes how she created (1) SAP -2, a table detailing PGW's summaries of accounts based on the PGW-provided account summaries; and (2) SAP-3, a compilation of all purchases, refinancings, and sales dates related to the properties in question, with line items relating to gas or PGW. She then compared SAP-2 with PGW's account information, including payments delineated on SAP-3. According to Pulley's testimony, PGW's account information did not match the information contained in the settlement statements. This information included in Ms. Pulley's testimony directly addresses the relationships between liens marked "vacated," liens marked "satisfied" and payments made by Complainants. Based upon the actual records derived from court filings and the actual PGW records, the gas and PGW line items evidence payments made to PGW for both balances and specific liens.

Ms. Pulley's testimony presents additional information, which confirms that Complainants, in fact, paid liens marked as "vacated." The PUC Complaint incorporated in SAP-12, is a public record filed against PGW, which further details attempted payment of balances and liens, and later actual payment of liens and balances. Ms. Pulley compiled a chart in SAP-12 showing the liens referenced in the complaint and their vacated status. The records compiled in SAP-12 and SAP-2 provides additional proof that rebuts Mr. Cummings' false

assertions and establishes, even though PGW marked liens as “vacated,” Complainants made payments and PGW removed the corresponding balance from the account.

Ms. Pulley’s testimony offers evidence that *at least* a quarter of all PGW liens against SBG properties were paid and marked “vacated.” PGW’s assertion that this testimony constitutes new evidence that extends beyond the testimony Mr. Cummings’ offered on April 24-25, 2023, and lacks merit. As discussed previously, Mr. Cummings’ Supplemental Remand Rebuttal Testimony specifically claimed that no evidence established PGW “vacated” liens in response to payments made, and therefore Complainants would receive “a windfall” if the Commission were to consider “vacated” liens in its calculation. *See Cummings Supp. Remand Rebuttal*, 4/24/2023, at 4: 16-18.

Ms. Pulley’s testimony and, in particular, Exhibits SAP-2, SAP-4, SAP-5, and SAP-6 reveal the inaccuracies within Mr. Cummings’ bald assertions.² These Exhibits identify where PGW’s account information noted recalculated Late Payment Charges (LPCs) and explain that PGW *never* provided a credit for such recalculated LPCs, which directly impacts the purported outstanding balances presented in Mr. Cummings’ testimony. Ms. Pulley’s testimony also delineated how PGW’s Exhibit BLC-12 included past due balances for sold properties and accounts no longer under SBG control (SAP-5 and SAP-11). Further, records show that, PGW *never* complied with ALJ Vero’s Orders, as confirmed by the Commission, which required PGW to provide Complainants with credits or refunds on both (1) existing SBG properties with active PGW accounts and (2) sold properties with closed accounts.

² Complainants note that Exhibit SAP-4 does not include reference to the 2015 Order concerning Colonial Garden and Simon Garden; however, this Order and the associated amounts should be included since PGW failed to pay those amounts.

Therefore, as ALJ Vero authorized during the evidentiary hearing on April 25, 2023, Ms. Pulley's testimony directly addresses the factual inaccuracies and inconsistencies contained within Mr. Cummings' testimony – nothing more. ,

III. CONCLUSION

PGW relies upon 52 Pa P.U.C. §5.243(e) in support of its Motion and Objection. That section reads as follows:

(e) A party will not be permitted to introduce evidence during a rebuttal phase which: **(1)** Is repetitive. **(2)** Should have been included in the party's case-in-chief. **(3)** Substantially varies from the party's case-in-chief.

As the foregoing discussion demonstrates, Complaints do not seek to introduce testimony that would violate § 5.243(e). The proffered testimony is narrowly tailored to address only those statements made by Mr. Cummings during his in-person testimony on April 25, 2023, and in his Supplemental Remand Rebuttal testimony served on April 24, 2023 at 4:08 p.m.

Your Honor considered the import of Ms. Pulley's testimony and decided to allow it as part of Complainants' Sur-Rebuttal. PGW's argument is a re-hash of the arguments made before Your Honor's ruling to allow its inclusion. A simple review of Ms. Pulley's Testimony belies PGW's contention. Ms. Pulley's testimony addresses only those statements in Mr. Cummings' live testimony and his Supplemental Remand Rebuttal presented for the first time one day prior the hearing. Ms. Pulley explains how she compared his statements to the information that had been supplied by PGW and was already part of the public record, pointing out the inaccuracies and misrepresentations. This is not new evidence or testimony; it is merely a refutation of inaccurate and unsubstantiated claims made by PGW's witness at the hearing.

As such, your Honor correctly ruled that Ms. Pulley's Remand Sur-rebuttal would be accepted. PGW's Motion and Objection should be DENIED/OVERRULED.

Respectfully submitted,

GOLDSTEIN LAW PARTNERS, LLC

By: /s/ Shawn M. Rodgers
Michael Yanoff
Shawn M. Rodgers
Patricia M. Starner
610 Old York Road, Suite 340
Jenkintown, PA 19046
(tel) 610.949.0444
(fax) 610.296.7730
myanoff@goldsteinlp.com
srodgers@goldsteinlp.com
pstarner@goldsteinlp.com

*Counsel for Complainants SBG
Management Services, Inc., et al.*

CERTIFICATE OF SERVICE

I hereby certify that this date I served a copy of SBG's Answer to PGW's Motion in Limine and Formal Objection to Preclude, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

VIA EMAIL

Daniel Clearfield, Esq.
Carl R. Shultz, Esq.
Bryce R. Beard, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street 8th Fl.
Harrisburg, PA 17101

/s/ Shawn M. Rodgers
Shawn M. Rodgers, Esquire
GOLDSTEIN LAW PARTNERS, LLC
610 Old York Road, Suite 340
Jenkintown, PA 19046
Phone: 610.949.0444
Email: srodgers@goldsteinlp.com

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